

IN THE HIGH COURT OF PUNJAB AND HARYANA, CHANDIGARH

C.W.P.No. 11541 of 2006

Date of Decision: 29.03.2007

Vipin Kumar & Others.

.....Petitioners

Versus

Punjab State electricity Board & Others.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE M.M.KUMAR
HON'BLE MR. JUSTICE RAJESH BINDAL**

Present: Mr. Dharam Pal, Advocate
for the applicant- petitioners.

Mr. Vikas Chatrath, Advocate
for the respondents.

JUDGMENT

M.M.KUMAR, J.(ORAL)

This petition filed under Section 226 of the Constitution prays for issuance of a writ in the nature of certiorari or any other appropriate writ order or direction quashing orders/directions in audit objection Annexure P-7 and P-8 passed by respondent No.2 and ordering recovery and withdrawal of Annual Grade Increments granted to the petitioners by the respondent No.4 and for restraining the respondents from implementing the said orders against the petitioners and effecting any recovery from the petitioner.

The petitioner Nos.1 to 5 were appointed on the post of Lower Division Clerk (LDC) with the respondent-Electricity Department. Petitioner Nos. 6 to 11 were in fact promoted from Class-IV post as L.D.C. against 20 percent quota allocated in their favour by the Board. It is averred that no condition in the order of promotion/appointment of the petitioners was envisaged requiring them to pass type test for earning Annual Grade Increments. However, they were enjoying the Annual Grade Increments, which came to be stopped when the audit party of the office of respondent No.2 i.e. Auditor, Punjab State Electricity Board raised an audit objection on 13.07.2006 (Annexure P-7 & Annexure P-8). The respondent Board without passing any order withdrew the increment granted to the petitioners as is evident from the perusal of para one of the replication

where reply to the preliminary objection it has so been stated. Although, the respondents have taken the stand that no order had been passed by the appointing authority to recover the amount from the petitioner and the matter with regard to audit objection raised in order P-7 and P-8 was under consideration of the respondent Board. It is further pertinent to mention that in the meanwhile the petitioners have qualified the requisite test in terms of the requirement of the instructions on, 17.1.2007.

After hearing the learned counsel for the parties, we are of the considered view that action of the respondent in withdrawing the increment of the petitioner is unsustainable in law for various reasons. Firstly before withdrawing the increments no notice or opportunity of hearing was given and secondly the petitioners have in any case; now passed test in January, 2007. It is also pertinent to mention that there is neither any mis-representation on part of the petitioners with regard to earning of increments nor any fact has been concealed. Therefore, no recovery could be effected from the petitioners in view the law laid down by Hon'ble Supreme Court in **Sahib Ram v. State of Haryana** reported as **1995(1) S.C.T. 668** and **Purshotam Lal Dass v. The State of Bihar** reported as **2007(1) R.S.J. 150**.

In view of above, we set aside the action of the respondent in withdrawing the increments and direct them to restore those increments especially when according to the stand of the respondent no order for withdrawing the increments or effecting recovery has been passed by the Board.

The petition is allowed in the above terms.

(M.M.KUMAR)
JUDGE

March 29, 2007
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(RAJESH BINDAL)
JUDGE